**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2762 OF 2004**

Navinchandra Mohanlal Desai & Ors. ...Petitioners

Versus

The Land Acquisition Officer & Anr ...Respondents

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Mr. A.Y. Sakhare, Senior counsel for Petitioners

Mr. G.S.Kulkarni, counsel for Respondent No.1

Mr. R. Ashokan, counsel for Respondent No.2.

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**CORAM: B. H. MARLAPALLE, J.**

**DATED: 29TH MARCH, 2005**

**P. C.:-**

1. Heard Mr. Sakhare, the learned senior counsel with Mr. Aradhye, for the petitoners, Mr. Kulkarni with Mrs. Joshi, the learned counsel for respondent No.1 and Mr. Ashokan, the learned counsel for the respondent No.2. Rule.

2. Respondents waive service of notice on Rule. Petition taken up for finalhearing forthwith.

3. The petitioners are the land owners whose lands were acquired by the respondent No.1 for respondent No.2 department and more so consequent to the orders passed by this Court. The Award came to be passed

under Section 11 of the Land Acquisition Act, 1894 (for short "the Act"), on 27.2.2003 and as per the further order passed by this Court on 20.3.2003, the said amount of Rs.84,70,000/- (Eighty four lakhs seventy thousand only) came to be deposited with the Court below on 27.3.2003 as the Reference for enhancement U/sec. 18 of the Act was pending. In the Reference proceedings, the petitioners filed an application at Exh.4 seeking leave to withdraw the amount. However, the learned District and Sessions Judge while allowing the application has directed the claimants to furnish a Bank Guarantee of Rs.20,00,000/- (Rupees Twenty lakhs only) each. The claimants are aggrieved by the conditions of Bank Guarantee and hence, this petition.

4. It is well settled that the Award passed by the Land Acquisition Officer under the Act is an offer of compensation to the land owners and it is subject to the decision in an application filed U/sec. 18 of the Act. However, the Reference Court while deciding the application for enhancement has no powers to reduce the compensation amount determined in the award passed by the Land Acquisition Officer. If regards be had to this settled position in law, while allowing the claimants to withdraw the amount, the condition of furnishing of Bank Guarantee is unwarranted as there would be no occasion for the

claimants to refund any part of the withdrawn amount even if the Reference for enhancement is decided against them.

5. The learned District Judge in the impugned order has relied upon the law laid down in the case of **Abdul Razzak and Others Vs. Kerla Water authorities and Others reported in (2002) 3 SCC 228.** It is required to be noted in the instant case that the respondent No.2 is not a local authority or an undertaking of the Union Territory. It is not a company or any other private body for whom the land was acquired by the Union Territory. The law laid down in the case of Abdul Razzak (supra) is not applicable to the respondent No.2 inasmuch as it is a department of Union Territory of Daman and the compensation amount has been paid from the funds of the Union Territory. The respondent No.2 therefore cannot challenge the award passed by the Land Acquisition Officer though it has taken steps to oppose an application for enhancement by impleading itself as the necessary party in the Reference proceedings before the District Court.

6. The petition is therefore allowed partly by modifying the impugned order as follows:-

The compensation amount of Rs.84,70,000/- deposited in the Land Acquisition Case No.1 of 2003 be paid to five claimants by five separate cross cheques of equal amount forthwith and that too without Bank Guarantee, with interest, accrued if any.

7. Rule made absolute in terms of the above modified order. No costs.

8. Writ to go forthwith to the Court below.